

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

MARY M. KOEGEL FERTEL-RUST,

Plaintiff,

v.

THE BADGER BUS COMPANY and its
white male driver and its white male passenger,

Defendants.

ORDER

10-cv-539-slc¹

On October 21, 2010, judgment was entered dismissing this case without prejudice for lack of subject matter jurisdiction. On January 7, 2011, I denied Mary Fertel-Rust's motion to alter or amend judgment.

Now Fertel-Rust has filed a notice of appeal of the January 7 decision, which is construed to also appeal the October 21, 2010 judgment. She requests leave to proceed *in forma pauperis* on appeal. Fertel-Rust also moves to supplement the record.

A district court has authority to deny a request for leave to proceed *in forma pauperis* under 28 U.S.C. § 1915 for one or more of the following reasons: (1) the litigant wishing to take an appeal has not established indigence or (2) the appeal is not taken in good faith. Sperow v. Melvin, 153 F.3d 780, 781 (7th Cir 1998). I find the latter to be the case here. Accordingly, Fertel-Rust's request for leave to proceed *in forma pauperis* on appeal will be denied.

In *Lucien v. Roegner*, 682 F.2d 625, 626 (7th Cir. 1982), the court of appeals instructed district courts to find bad faith where a plaintiff is appealing the same claims the

¹For the purpose of issuing this order, District Judge William M. Conley acts for the court.

Copy of this document has been
provided to: plaintiff
this 9 day of Feb, 2011
by M. Hardin
M. Hardin, Secretary to
Judge William M. Conley

court found to be without legal merit. *See Lee v. Clinton*, 209 F.3d 1025 (7th Cir. 2000). Fertel-Rust is trying to appeal a claim dismissed for lack of jurisdiction. Because there is no legally meritorious basis for Fertel-Rust's appeal, the appeal can not be pursued in good faith.

Because the court is certifying Fertel-Rust's appeal as not having been taken in good faith, she cannot proceed with her appeal without prepaying the \$455 filing fee, unless the court of appeals gives her permission to do so. Pursuant to Fed. R. App. P. 24, Fertel-Rust has 30 days from the date of this order in which to ask the court of appeals to review this court's denial of leave to proceed *in forma pauperis* on appeal. Her motion must be accompanied by:

- (1) an affidavit as described in the first paragraph of Fed. R. App. P. 24(a), including a statement of issues that Fertel-Rust intends to present on appeal; and
- (2) a copy of this order.

Fertel-Rust should be aware that these documents should be filed in addition to the notice of appeal she has previously filed. If Fertel-Rust does not file a motion requesting review of this order, the court of appeals may not address the denial of leave to proceed *in forma pauperis* on appeal. Instead, it may require Fertel-Rust to pay the entire \$455 filing fee before it considers her appeal. If Fertel-Rust fails to pay the fee within the deadline set, it is also possible that the court of appeals will dismiss the appeal.

After filing her notice of appeal, Fertel-Rust filed a motion to supplement the record on appeal pursuant to Fed. R. App. P. 10(e). She wishes to add a recording of a hearing in Madison municipal court that occurred on February 3, 2011, a month after this court's last decision in her case. Her motion must be denied because this evidence was not before the

court when it made its decision.

ORDER

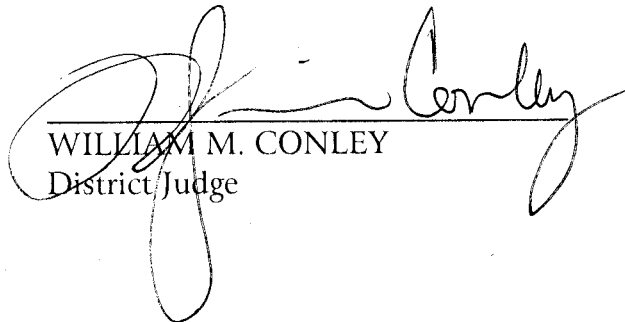
IT IS ORDERED that

1. Plaintiff Mary Fertel-Rust's request for leave to proceed *in forma pauperis* on appeal is DENIED. I certify that her appeal is not taken in good faith.

2. Plaintiff's motion to supplement the records is DENIED.

Entered this 9th day of February, 2011.

BY THE COURT:


WILLIAM M. CONLEY
District Judge